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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,712	04/02/2004	Dennis Piper	FULLN014USPT02	1186
23403 7590 05/12/2010 SHERRILL, LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205				
EXAMINER SUTTON, ANDREW W				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
05/12/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

michaels@sherrilllaw.com  
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docketing@sherrilllaw.com

### Office Action Summary

**Application No.**

10/816,712

**Applicant(s)**

PIPER ET AL.

**Examiner**

ANDREW W. SUTTON

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to claims 1-13 and 20 have been considered but are moot in view of the new ground(s) of rejection.

In respect to claims 14-18 the applicant's arguments filed 1/21/10 have been fully considered but they are not persuasive. The examiner acknowledges a mistake in referencing the rear portion of Lampe '399 when it actually was the front portion. The correction is made in the rejection below. However, the rejection still stands as it was the teaching of the multiple pads of Lampe that was applied to the reference of Steffen, not the specific orientation (front/rear) of the pads.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 20 is rejected under 35 U.S.C. 102(a) as being anticipated by Lampe (US 6,625,820). Lampe teaches a headguard comprising a front piece 23t with a front pad 20 and a rear piece 33t with a rear pad 30 that is attached via a diametrically opposed pivot point 40.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampe (US 6,625,850) in view of Wallman (US 1,638,756). Lampe teaches a headgear with a protective pad 20 with retention members 41 and 42 both extending laterally across the forehead and attached to the pad that have two separate and distinct tensioned and diametrically intersecting circumferential lines of retention when worn on the head. Lampe does not teach the circumferential lines intercepting. Wallman teaches a headgear with intercepting lines of retention 12 and 13. It would have been obvious to one of ordinary skill in the art to modify the teaching of Lampe with that of Wallman to reduce the footprint of the headgear on the wearer.

As to claims 2, 3, and 10-11, Gilson teaches the bands 41 and 42 are neoprene and would be elastic.

As to claims 4 and 12, the straps 41 and 42 include length adjusting means 90 for adjusting the length of each strap.

As to claims 5 and 13, the straps 41 and 42 are capable of intercepting proximate to the temple.

As to claim 6, the straps 41 and 42 are capable of running above and below the occipital bone, respectively.

As to claim 7, the straps 42 and 43 are capable of being adjusted with respect to the angle in relation to each other.

As to claim 8, the intersection points are capable of being circumferentially shifted.

Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399). Steffen teaches headgear with a rear protective portion 50 and a front protective piece 12 and a retention element "elastic strap 22" interconnecting the front and rear portions. The front and rear portions have a pad 50 placed within the cover 52. Steffen does not teach the use of multiple pads. Lampe teaches a headgear comprising a front portion having multiple protective pads 6. It would have been obvious to one of ordinary skill in the art to modify the teaching of Steffen with that of Lampe to provide the headgear and better fit on the wearer of the device due to the pads freedom to contour the wearer's head (via shifting).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399) in further view of Mattes. Steffen/Lampe teaches the device substantially above. They do not teach the use of length adjusting means. Mattes teaches straps 20 and 26 with length adjusting means 24 and 28. It would have been obvious to one of ordinary skill in the art to modify the teachings of Steffen/Lampe with that of Mattes as it is well known in the art to provide adjustment means on straps to provide fit to a range of wearer's.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANDREW W. SUTTON** whose telephone number is (571) 272-6093. The examiner can normally be reached on **Monday - Thursday 7:00 am -5:00 pm and Friday 7:00 am - 11:00 am**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
6 May 2010

/Shaun R Hurley/  
Primary Examiner, Art Unit 3765